

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 7739

BILL NUMBER: HB 1763

NOTE PREPARED: Jan 12, 2007

BILL AMENDED:

SUBJECT: Archeology.

FIRST AUTHOR: Rep. Pierce

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
☐ **FEDERAL**

IMPACT: State & Local

Summary of Legislation: *Definition of Artifact.* The bill defines "artifact" as an object made by a human before December 31, 1870.

Disturbing Burial Ground. It requires a person disturbing ground to use reasonable care and diligence to determine if the ground that may be disturbed is within 100 feet of a cemetery or burial ground. It requires a person who disturbs buried human remains or artifacts to cease disturbing the remains or artifacts and the surrounding area within 100 feet. Failure to do so constitutes a Class A infraction.

Confidential Historical or Archeological Sites. It makes reports concerning the location of historical or archeological sites confidential under some circumstances.

Determination of a Violation. The bill allows certain persons to accompany a conservation officer to investigate a violation of historic preservation and archeology law.

Program to Assist Homeowners. It establishes a fund to assist private homeowners who accidentally discover an artifact, a burial object, or human remains and need assistance to comply with an approved archeological or development plan. It also allows a court to order restitution for certain costs related to the violation of historic preservation and archeology law.

Archeology Preservation Trust Fund: The bill annually appropriates money in the Archeology Preservation Trust Fund.

Penalty Provisions The bill makes it a Class D felony to possess looted property and a Class C felony if the

cost of carrying out an archeological investigation on the site that was damaged to obtain the looted property is more than \$100,000.

Miscellaneous: It provides that a disinterment under a plan approved by the Department of Natural Resources (DNR) is exempt from other disinterment procedures. It also makes conforming changes.

Effective Date: July 1, 2007.

Explanation of State Expenditures: *Definition of Artifact.* This bill defines "artifact" as an object made or shaped by human workmanship before December 31, 1870, that the DNR determines is significant. Under existing law, an artifact is an object made before December 11, 1816. The bill would expand the number of objects that would fall under the DNR jurisdiction. However, the DNR should be able to cover any additional costs associated with this provision given its existing level of budget and resources.

Disturbing Burial Ground. Under existing law, a person who disturbs buried human remains must notify the DNR within two business days of the time of the disturbance and treat or re-bury the remains according to rules adopted by the Natural Resources Commission or a court order and permit issued by the State Department of Health. Under the proposal, the person must immediately cease disturbing the human remains and the area within 100 feet of the human remains; notify the DNR within two business days; refrain from covering over the human remains; submit a development plan to the DNR (if required); and treat or re-bury the human remains according to rules adopted by the Commission or a court order and permit issued by the State Department of Health. Adding additional requirements could result in additional violations. A person who recklessly, knowingly, or intentionally violates these provisions commits a Class A misdemeanor.

Under existing law, a person who discovers an artifact or burial object while disturbing the ground for a purpose other than the discovery of artifacts or burial objects must immediately cease disturbing the ground and notify the DNR within two business days. After notification, the DNR may authorize the person to continue the ground disturbing activity or require that continued ground disturbance be conducted only in accordance with an approved plan. The DNR has 30 days to make a determination. Under the proposal, the person who discovers an artifact or burial object must immediately cease disturbing the ground and the area within 100 feet of the artifact or burial object. The person must also refrain from covering over the artifact or burial object. The person must also notify the DNR within two business days. Persons who violate these additional requirements commit a Class A infraction.

Confidential Historical or Archeological Sites. The proposal provides that the DNR Division of Historic Preservation and Archeology may keep reports and information concerning the location of historic and archeological sites confidential if the division director determines that disclosure would likely risk harm to the historic or archeological site; cause a significant invasion of privacy; or impede the use of a traditional religious site by practitioners. The division may not disclose reports and information required to be confidential under federal law. If the division director determines that reports and information should be confidential, the DNR director, in consultation with the division director, must determine who may have access to the confidential reports and information. These provisions could increase administrative expenses for the DNR. However, the DNR should be able to cover any additional expense given its existing level of budget and resources.

Determination of a Violation. The proposal provides that an employee of the Division of Historic Preservation and Archeology or a person authorized by the DNR may accompany a conservation officer on public or private property to determine if there is a violation. This provision could increase expenses to the

DNR; however, it is presumed that the DNR will be able to cover any additional expense given its existing level of budget and resources or through the reallocation of current resources.

Program to Assist Homeowners. Under the proposal, the division may conduct a program to assist private homeowners who have accidentally discovered an artifact, a burial object, or human remains and who need assistance to comply with an approved plan to excavate or secure the site from further disturbance. The division may conduct the program alone or by entering into an agreement with a historical society, the Historic Landmarks Foundation, a professional archeologist or historian, or any other entity that the division selects. These provisions may increase expenses for the division. However, the bill provides that in conducting a program, the division may receive gifts and grants under terms, obligations, and liabilities that the division director considers appropriate. The director must use a gift or grant for the program.

Archeology Preservation Trust Fund. The Auditor of State must establish the Archeology Preservation Trust Fund for purposes of holding money received for the program to assist homeowners. The division director must administer the fund. Expenses of administering the fund must be paid from money in the fund. The Treasurer of State must invest the money in the Archeology Preservation Trust Fund that is not currently needed to meet the obligations of the trust fund in the same manner as other public trust funds may be invested. The Treasurer must deposit in the fund the interest that accrues from the investment of the trust fund. Money in the trust fund at the end of a state fiscal year does not revert to the state General Fund. There is annually appropriated to the division the money in the trust fund. The division may adopt rules to govern the administration of the fund program and provisions.

Penalty Provisions--Restitution. The bill provides that in addition to a sentence imposed for a felony or misdemeanor; or judgment imposed for an infraction; and an order for restitution to a victim, the court may order an individual to make restitution to the trust fund for the division's cost necessitated because of the offense committed by the individual. The court must forward a copy of an order for restitution to the division.

Violators commit a Class A misdemeanor if the ground is disturbed before a plan is approved by the DNR or if the person recklessly, knowingly, or intentionally does not cease the disturbance upon the discovery of a site that contains human remains or artifacts. The offense is a Class D felony if the person disturbs buried human remains or grave markers while committing the offense. A person who knowingly or intentionally receives, retains, or disposes of an artifact, a burial object, or human remains commits possession of looted property, a Class D felony. However, the offense is a Class C felony if the fair market cost of carrying out a scientific archeological investigation of the area that was damaged to obtain the artifact, burial object, or human remains is at least \$100,000.

A Class D felony is punishable by a prison term ranging from six months to three years or reduction to Class A misdemeanor depending upon mitigating and aggravating circumstances. A Class C felony is punishable by a prison term ranging from two to eight years depending upon mitigating and aggravating circumstances. The average expenditure to house an adult offender was \$22,734 in FY 2006. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the average cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner. The estimated average cost of housing a juvenile in a state juvenile facility was \$63,139. The average length of stay in Department of Correction (DOC) facilities for all Class D felony offenders is approximately ten months.

Explanation of State Revenues: *Penalty Provisions.* The bill establishes a Class A infraction for violating certain duties concerning the unintentional discovery of artifacts. If additional court cases occur and

infraction judgments and court fees are collected, revenue to the state General Fund may increase. The maximum judgment for a Class A infraction is \$10,000, which is deposited in the state General Fund. If court actions are filed and a judgment is entered, a court fee of \$70 would be assessed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court.

The maximum fine for Class C or a Class D felony is \$10,000. The maximum fine for a Class A misdemeanor is \$5,000. If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. Criminal fines are deposited in the Common School Fund.

If the case is filed in a circuit, superior, or county court, 70% of the \$120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund.

Explanation of Local Expenditures: The proposal could reduce local expenditures to the extent that local units would have access to documentation from the state indicating that a burial ground was or was not within 100 feet of a land disturbance. Local units would not need to make their own determinations.

Penalty Provisions. A Class A misdemeanor is punishable by up to one year in jail. The average daily cost to incarcerate a prisoner in a county jail is approximately \$44. More alleged felony defendants could be detained in county jails prior to their court hearings.

Explanation of Local Revenues: *Penalty Provisions.* If additional court actions are filed and a judgment is entered, local governments would receive revenue from the following sources. The county general fund would receive 27% of the \$70 court fee (for infractions) or \$120 court fee (for felonies and misdemeanors) that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

State Agencies Affected: Department of Correction; DNR.

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources: Indiana Sheriffs' Association, Department of Correction.

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